

PROPOSED AMENDED RULE AND REGULATION NO. 56
COMPANIES' FINANCIAL REGULATION FEES

SECTIONS

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SECTION 1. PURPOSE. ~~—The purpose of this Rule and Regulation is to implement administrative and financial regulation fees as established in and clarify Sections 3, 4 and 5 of Arkansas Act 652 of 1993, the State Insurance Department Trust Fund Act ("Trust Fund Act"), Ark. Code Ann. § 23-61-701 et seq., and Section 44 and others of Act 901 of 1993, and the Department Omnibus Act of 1993 ("Omnibus Act"), which specify the method and manner of payment of nonrefundable administrative and financial regulatory fees payable by licensed or authorized insurers and others to The State Insurance Department Trust Fund ("Trust Fund") for the support of the operations of the Arkansas Insurance Department ("Department"). Further, it is to clarify that fees imposed under this Rule pursuant to the provisions of Section 3 of Act 652 of 1993 are in addition to any other fee, assessment, tax or premium tax or penalty due and payable under other Arkansas laws or rules by insurers as defined in Act 652. The Rule is to detail the credit provision available to domestic insurers under Section 44 of the Omnibus Act of 1993.~~

SECTION 2. AUTHORITY AND SCOPE.

(A) AUTHORITY. ~~—The Insurance Commissioner ("Commissioner") hereby promulgates this Rule under his authority pursuant to Section 10(a) of the Trust Fund Act, Ark. Code Ann. §23-61-108 and; §23-61-709 §§25-15-201, et seq.; and other applicable sections of Arkansas law. Credits for domestic insurers referenced in Section 4 of this Rule are based on the provisions of Section 44 of the Omnibus Act.~~

all (B) SCOPE. ~~—This Rule shall apply to all licensed insurers, or including without limitation~~ authorized domestic, foreign, and/or alien stock and mutual insurers, mutual assessment life and disability insurers, health maintenance organizations ("HMO's"), fraternal benefit societies, hospital and medical service corporations, stipulated premium plan and reciprocal insurers, title insurance companies, prepaid legal insurance companies, and farmers' mutual aid associations ("FMAA's"), ~~—pursuant to Section 3 of Act 652 of 1993.~~ For purposes of this Rule, "insurers" shall mean all and any of the licensed or authorized insurers of the Commissioner referenced in this Rule, ~~in Section 3 of Act 652 of 1993,~~ and as defined in Ark. Code Ann. §23-60-102 (11).

(C) APPLICATION. ~~—The Rule is not intended to and shall not apply to approved but non-admitted surplus line insurers, registered foreign and alien risk retention groups, registered purchasing groups, risk-based provider organizations, or to licensed automobile clubs or associations. This Rule is intended to apply to annuity premiums and considerations, including annuity and other fund deposit premiums listed on the NAIC Convention Blank Schedule T.~~

~~This Rule is not intended to apply to indemnity reinsurance premiums or other premiums which are not "direct written." The Rule is intended to apply to companies who licensed or authorized insurers have not written any with no annual direct written Arkansas premiums in the reported calendar year; the fee imposed by the Act in that situation is the nominal sum of \$500.~~

~~SECTION 3. EFFECTIVE DATE. This permanent Rule shall be was originally issued on September 10, 1993, replacing the earlier "Emergency Rule 56" in effect since May 15, 1993; and this amended Rule shall be effective that date as to all persons receiving actual notice on January 1, 2022(?), and shall be effective as to all others by constructive notice upon the Commissioner's filing of this Rule with the Arkansas Secretary of State and Arkansas State Library, as required by Ark. Code Ann. §§25-15-201, et seq., as amended by Act 1106 of 1993.~~

SECTION ~~3~~4. ADMINISTRATIVE AND FINANCIAL REGULATION FEES.

(A) FEES DUE ON OR BEFORE JUNE ~~30~~^{1st} of each calendar year, ~~1993~~. All insurers ~~are were~~ required by ~~Section 3 of Act 652 of 1993 Ark. Code Ann. § 23-61-703 (a)(1) and by Emergency this Rule and Regulation 56~~ to forward to the Department the nonrefundable administrative and financial regulation fee, payable to **THE STATE INSURANCE DEPARTMENT TRUST FUND**, ~~on or before June 30, 1993~~, based upon the insurer's direct ~~written~~ premiums or annuity considerations (both new and renewal) written ~~or received from or~~ in the State ~~of Arkansas during 1992 the previous calendar year end~~, as evidenced ~~by the appropriate Annual Arkansas state page detailing premiums written by class or subclass of insurance on the insurer's 1992 Annual Financial Statement on the Annual Statement Schedule T page; For Life, Accident and Health companies this would include the total amount from "Total Columns 2 through 5" on the Schedule T. For Property and Casualty companies this would be the total from column "Direct Premiums Written."~~. ~~The fees was are~~ to be determined and paid in accordance with the following schedule.

| ARKANSAS PREMIUMS | REG FEE | ARKANSAS PREMIUMS | REG FEE |
|---------------------|---------|-------------------------|----------|
| \$0 | \$ 500 | \$10,000,000-19,999,999 | \$10,000 |
| 01-499,999 | 750 | 20,000,000-29,999,999 | 12,000 |
| 500,000-2,499,999 | 1,000 | 30,000,000-49,999,999 | 15,000 |
| 2,500,000-4,999,999 | 2,500 | 50,000,000-74,999,999 | 17,500 |
| 5,000,000-7,499,999 | 5,000 | 75,000,000-99,999,999 | 20,000 |
| 7,500,000-9,999,999 | 7,500 | 100,000,000 and up | 25,000 |

~~—— (B) FEES DUE ANNUALLY ON OR AFTER JUNE 30, 1993 of each calendar year. On and after July 1, 1993, The administrative and financial regulation fee of insurers due under Section 3 of Act 652 of 1993 and this Permanent Rule and Regulation 56 shall be due and payable in the amounts, methods and manner required in Subsection (A) of this Section on or before June 30th of each calendar year, based upon the direct written premiums and/or annuity considerations received in the previous calendar year and as reported in the pertinent Annual Financial Statement. However, the fee imposed by this Rule shall in no event exceed \$25,000~~

~~for any one insurer in any one calendar year.~~

(BC) MANNER AND METHOD OF PAYMENT.

(1) The amount of the fee shall be reported on a form prescribed by the Commissioner, and the form ~~Form CFRF and accompanying fee payment shall be tendered to the Accounting Division of the Department. The fee shall be in the form of cash, a company check or law firm check, certified or cashier's check or money order payable to THE STATE INSURANCE DEPARTMENT TRUST FUND, and shall be mailed or delivered with the Form to the Department, 1123 South University Avenue, Suite 400, Little Rock, Arkansas 72204; ATTN.: Accounting Division) shall be reported on a form prescribed by the Commissioner, and the assessment payment shall be tendered to the Insurance Fraud Investigation Division of the Arkansas Insurance Department using the OPTins (Online Premium Tax for Insurance) system.~~

(2) No other ~~Code or Rule~~ required fees, licensure fees, fines or taxes shall accompany the filing and payment of these fees and any penalties required under this Rule ~~regulation~~; however, if by error any other fees, fines or taxes accompany or are included with this fee payment, the unrelated payment(s) shall be deposited pursuant to the other applicable law or rule.

(CD) PAYMENT UPON VOLUNTARY WITHDRAWAL.—Any insurer voluntarily withdrawing from the State of Arkansas, or voluntarily surrendering its Arkansas certificate of authority for cancellation, shall report and pay the fees owed under this Rule for the final report or calendar year of withdrawal before the Department cancels or expires the Arkansas license and before the Department releases any security deposit of the withdrawing insurer.

~~(E) TRUST FUND DEPOSIT UPON RECEIPT. Upon receipt, the Commissioner shall deposit the fees and/or penalties imposed by this Rule directly into the Trust Fund as special revenues, pursuant to Act 652 of 1993.~~

(DF) FEES IN ADDITION TO OTHER REQUIRED PAYMENTS.—The fees paid by insurers as required under ~~Section 3 of Act 652 of 1993 and~~ this Rule are due and payable in addition to any other licensure, exam, appointment or registration, product or service fee, fine or tax or assessment required by any other ~~Arkansas Code law or any Rule section.~~

(EG) DOMESTIC INSURERS' CREDITS FOR FEES PAID IN OTHER JURISDICTIONS. ~~Pursuant to -Ark Code Ann §23-63-116, i~~Pursuant to ~~Section 44 of the Omnibus Act of 1993, insurers domiciled in Arkansas -on and after the effective date of the Omnibus Act, April 6, 1993,~~are entitled to list as a credit against their Arkansas premium taxes the retaliatory amount of fees paid in other states of licensure because of this State's imposition of the administrative and financial regulation fee under ~~Section 3 of Act 652 of 1993 and this Rule. For fees paid for a calendar year in 1993, a credit may be listed on the insurer's annual premium tax form due on or before March 1, 1994; thereafter and in subsequent years, the a credit may be taken on the insurer's annual premium tax report due March 1st annually the following calendar year.~~ In no event shall any such credits be allowed against quarterly estimated premium tax payments or referenced in such reports.

(FH) FEES IN LIEU OF EXAMINERS' COMPENSATION.

(1) As to Department examinations of insurers ~~commenced on and after March 24, 1993,~~ after an insurer has paid the fee imposed by this Rule ~~and Act 652 of 1993,~~ proof of its payment of the fee ~~on the~~ Department records shall be evidence of its payment in lieu of insurers' remittance of examiners' salaries, wages or compensation ~~during-at~~ or after a Department

examination. The examiners' salaries, wages or compensation shall be due and payable as to any examination of any insurer which has not paid its fee imposed by this Rule ~~and Act 652 of 1993~~.

(2) This provision shall be in addition to any other section providing a remedy for nonpayment or noncompliance available to the Commissioner under ~~Act 652 of 1993 or this Rule~~. Any insurer undergoing Department examination shall continue to be liable for the payment of and shall pay the examiners' reasonable expenses for food, lodging and travel pursuant to ~~Section 12 of Act 652 of 1993 and~~ Ark. Code Ann. §§23-61-201, et seq., regardless of payment or nonpayment of the fee or any penalties imposed under this Rule.

SECTION ~~54~~._PAYMENT EXTENSIONS AND WAIVERS; PENALTY FOR ~~N~~ ~~NONCOMPLIANCE~~.

(A) TIME EXTENSION. In his or her complete discretion and for good cause shown, the Insurance Commissioner may grant an extension for reporting and/or payment of the fee required by this Rule for any insurer applying for an extension with written notice received by the Commissioner not less than ten (10) days prior to the due date prescribed by this Rule.

(B) WAIVER; CESSATION OF WAIVER. ~~—(1)~~ The Commissioner in his or her complete discretion may waive all or any part of the fee assessed under this Rule due from an insurer if: (a) the insurer's Arkansas certificate of authority is suspended or revoked; or (b) if the Commissioner finds that the insurer is impaired or insolvent, or its continuing operations are hazardous to the insurance-buying public of the State; or (c) if the insurer is under domiciliary department supervision, or court-ordered conservation, rehabilitation, or liquidation in any state.

~~(2) Any insurer or its domiciliary state insurance department, or domiciliary state conservator, rehabilitator, or liquidator may request waiver in writing; but the Commissioner shall not consider waivers for insurers which fail to give the advance written notice required by this Rule. Upon activation or reinstatement of any suspended insurer's Arkansas certificate of authority, the insurer shall automatically commence reporting and payment of the fee on the next due date following reinstatement or activation, and annually thereafter during continued active licensure in this State. Trust Fund reimbursement for fees which would have been assessed during the waiver period but for the Commissioner's approval of the waiver shall not be required.~~

~~—(C) PENALTY. (1) Upon failure of the insurer to report or pay the fees or penalties required by Act 652 of 1993 and Ark. Code Ann. § 23-61-703 and this Rule when due, licensedthe insurers shall be subject to a absent an extension or waiver which the Commissioner has granted, the Commissioner shall assess and collect a monetary penalty of one hundred dollars (\$100) a day for each day of delinquency.~~

~~(2) The Commissioner, after notice and a hearing, may also suspend the Arkansas certificate of authority of any insurer until delinquent fees and the monetary penalty under this Rule are paid to the Trust Fund. After notice and a hearing, the Commissioner may suspend or revoke the Arkansas certificate of authority of any insurer upon his finding that the insurer has without good cause failed to report and/or pay the fees.~~

~~—(D) OTHER LEGAL REMEDIES FOR COLLECTION. Upon the failure of any insurer to report and/or pay the fee at any time pursuant to this Rule, the Commissioner may bring an action in the Pulaski County Circuit Court or Federal District Court or other court as appropriate~~

~~in the name of and on behalf of the Trust Fund to recover any fees and monetary penalties owed by the non-complying insurer. Any such action shall be additional to other remedies available to the Commissioner. The Commissioner shall demand and collect from the insurer payment or reimbursement of any Department examiner's salary, wages or compensation accruing during the course of an examination of the insurer which coincides with the reporting period when the fee is due and is not paid. All costs of such an action, including reasonable attorney fees and expenses, shall be payable by the insurer failing to pay the subject fee and/or penalty and may be included as part of any judgment. The doctrine of election of remedies shall not be applicable under this Rule, and the Commissioner shall, upon a violation by an insurer, have authority to sanction and restrict the insurer's license and authority to transact business as well as to seek such judicial recourse as he deems necessary on behalf of the people of the State.~~

SECTION 56. SEVERABILITY. If any provision of this Rule or the application thereof to any insurer, person or circumstance is held invalid, such invalidity shall not affect other provisions or applications of this Rule which can be given effect without the invalid provisions or application; and to this end, the provisions of this Rule are declared to be severable.

~~_____
(signed by Commissioner Douglass)~~

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LEE DOUGLASSALAN McCLAIN
INSURANCE COMMISSIONER
STATE OF ARKANSAS~~

~~_____
DATE SEPTEMBER 10, 1993~~